

section 402(f) of the Act by the Black Lung Benefits Reform Act of 1977 authorize the Secretary of Labor to establish criteria for determining total or partial disability or death due to pneumoconiosis to be applied in the processing and adjudication of claims filed under part C of title IV of the Act. Section 402(f) of the Act further authorizes the Secretary of Labor, in consultation with the National Institute for Occupational Safety and Health, to establish criteria for all appropriate medical tests administered in connection with a claim for benefits. Section 413(b) of the Act authorizes the Secretary of Labor to establish criteria for the techniques to be used to take chest roentgenograms (X-rays) in connection with a claim for benefits under the Act.

(b) The Black Lung Benefits Reform Act of 1977 provided that with respect to a claim filed prior to April 1, 1980, or reviewed under section 435 of the Act, the standards to be applied in the adjudication of such claim shall not be more restrictive than the criteria applicable to a claim filed on June 30, 1973, with the Social Security Administration, whether or not the final disposition of the claim occurs after March 31, 1980. All such claims shall be reviewed under the criteria set forth in part 727 of this title (see 20 CFR 725.4(d)).

§ 718.2 Applicability of this part.

With the exception of the second sentence of § 718.204(a), this part is applicable to the adjudication of all claims filed after March 31, 1980, and considered by the Secretary of Labor under section 422 of the Act and part 725 of this subchapter. The second sentence of § 718.204(a) is applicable to the adjudication of all claims filed after January 19, 2001. If a claim subject to the provisions of section 435 of the Act and subpart C of part 727 of this subchapter (see 20 CFR 725.4(d)) cannot be approved under that subpart, such claim may be approved, if appropriate, under the provisions contained in this part. The provisions of this part shall, to the extent appropriate, be construed together in the adjudication of all claims.

[68 FR 69935, Dec. 15, 2003]

§ 718.3 Scope and intent of this part.

(a) This part sets forth the standards to be applied in determining whether a coal miner is or was totally, or in the case of a claim subject to § 718.306 partially, disabled due to pneumoconiosis or died due to pneumoconiosis. It also specifies the procedures and requirements to be followed in conducting medical examinations and in administering various tests relevant to such determinations.

(b) This part is designed to interpret the presumptions contained in section 411(c) of the Act, evidentiary standards and criteria contained in section 413(b) of the Act and definitional requirements and standards contained in section 402(f) of the Act within a coherent framework for the adjudication of claims. It is intended that these enumerated provisions of the Act be construed as provided in this part.

§ 718.4 Definitions and use of terms.

Except as is otherwise provided by this part, the definitions and usages of terms contained in § 725.101 of subpart A of part 725 of this title shall be applicable to this part.

Subpart B—Criteria for the Development of Medical Evidence

SOURCE: 65 FR 80045, Dec. 20, 2000, unless otherwise noted.

§ 718.101 General.

(a) The Office of Workers' Compensation Programs (hereinafter OWCP or the Office) shall develop the medical evidence necessary for a determination with respect to each claimant's entitlement to benefits. Each miner who files a claim for benefits under the Act shall be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation including, but not limited to, a chest roentgenogram (X-ray), physical examination, pulmonary function tests and a blood-gas study.

(b) The standards for the administration of clinical tests and examinations contained in this subpart shall apply to all evidence developed by any party after January 19, 2001 in connection with a claim governed by this part (see

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§§ 725.406(b), 725.414(a), 725.456(d)). These standards shall also apply to claims governed by part 727 (see 20 CFR 725.4(d)), but only for clinical tests or examinations conducted after January 19, 2001. Any clinical test or examination subject to these standards shall be in substantial compliance with the applicable standard in order to constitute evidence of the fact for which it is proffered. Unless otherwise provided, any evidence which is not in substantial compliance with the applicable standard is insufficient to establish the fact for which it is proffered.

§ 718.102 Chest roentgenograms (X-rays).

(a) A chest roentgenogram (X-ray) shall be of suitable quality for proper classification of pneumoconiosis and shall conform to the standards for administration and interpretation of chest X-rays as described in Appendix A.

(b) A chest X-ray to establish the existence of pneumoconiosis shall be classified as Category 1, 2, 3, A, B, or C, according to the International Labour Organization Union Internationale Contra Cancer/Cincinnati (1971) International Classification of Radiographs of the Pneumoconioses (ILO-U/C 1971), or subsequent revisions thereof. This document is available from the Division of Coal Mine Workers' Compensation in the U.S. Department of Labor, Washington, D.C., telephone (202) 693-0046, and from the National Institute for Occupational Safety and Health (NIOSH), located in Cincinnati, Ohio, telephone (513) 841-4428 and Morgantown, West Virginia, telephone (304) 285-5749. A chest X-ray classified as Category Z under the ILO Classification (1958) or Short Form (1968) shall be reclassified as Category 0 or Category 1 as appropriate, and only the latter accepted as evidence of pneumoconiosis. A chest X-ray classified under any of the foregoing classifications as Category 0, including sub-categories 0—, 0/0, or 0/1 under the UICC/Cincinnati (1968) Classification or the ILO-U/C 1971 Classification does not constitute evidence of pneumoconiosis.

(c) A description and interpretation of the findings in terms of the classifications described in paragraph (b) of

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this section shall be submitted by the examining physician along with the film. The report shall specify the name and qualifications of the person who took the film and the name and qualifications of the physician interpreting the film. If the physician interpreting the film is a Board-certified or Board-eligible radiologist or a certified “B” reader (see § 718.202), he or she shall so indicate. The report shall further specify that the film was interpreted in compliance with this paragraph.

(d) The original film on which the X-ray report is based shall be supplied to the Office, unless prohibited by law, in which event the report shall be considered as evidence only if the original film is otherwise available to the Office and other parties. Where the chest X-ray of a deceased miner has been lost, destroyed or is otherwise unavailable, a report of a chest X-ray submitted by any party shall be considered in connection with the claim.

(e) Except as provided in this paragraph, no chest X-ray shall constitute evidence of the presence or absence of pneumoconiosis unless it is conducted and reported in accordance with the requirements of this section and Appendix A. In the absence of evidence to the contrary, compliance with the requirements of Appendix A shall be presumed. In the case of a deceased miner where the only available X-ray does not substantially comply with paragraphs (a) through (d), such X-ray may form the basis for a finding of the presence or absence of pneumoconiosis if it is of sufficient quality for determining the presence or absence of pneumoconiosis and such X-ray was interpreted by a Board-certified or Board-eligible radiologist or a certified “B” reader (see § 718.202).

§ 718.103 Pulmonary function tests.

(a) Any report of pulmonary function tests submitted in connection with a claim for benefits shall record the results of flow versus volume (flow-volume loop). The instrument shall simultaneously provide records of volume versus time (spirometric tracing). The report shall provide the results of the forced expiratory volume in one second (FEV1) and the forced vital capacity (FVC). The report shall also provide